IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

SECOND APPEAL NO. 1105 OF 2004

Shri Bhagwandas Verhomal & ors. ... Appellants

V/s

Chintaman Mahadeo Wadekar & ors. ... Respondents

Shri A.Y. Sakhare i/by Shri V.S. Kapse for the appellants.
Shri A.A. Kumbhakoni i/by Shri S.A.Sawant for the respondent No.4.

CORAM: P.V. KAKADE, J.
DATED: 16TH SEPT., 2004.

P.C.:

1. The appellants-plaintiffs have preferred this appeal against the judgment and order passed by the Ad-hoc Additional District Judge, Pune, dated 3.7.2004 dismissing the appeal and confirming the order passed by the Civil Judge, Sr.Divn., Pune on 21.1.2000 decreeing the suit partly whereby specific performance of the contract was refused but payment of residue of the earnest amount was directed to be refunded.

2. The plaintiffs filed the suit for specific performance of contract in respect of the land being Survey Nos.46, 47, 49, 50 & 52 situated at Khandala within the limits of Lonawala Municipal Council. The

learned Trial Judge came to the conclusion on the basis of available evidence that even though the plaintiffs were held ready and willing to perform part of the contract, it was established that the defendants had proved that they had legally terminated the said agreement dated 7.10.1964 and as such, the specific performance of the contract could not be granted. Consequently, the earnest amount was directed to be refunded.

The lower Appellate Court Judge was of the view that the evidence on record was not sufficient to show that the plaintiffs were ready and willing to perform their contract and to that effect lower Court's order was reversed in that regard. However, the Appellate Court came to the conclusion that the plaintiffs were not entitled to specific performance of the contract and, as such, the appeal came to be rejected. Hence the present appeal.

4. After hearing the learned counsel for both parties and perusing the entire record, I am of the view that no substantial question of law is involved in the present case. The so called question of law sought to be raised cannot be said to be substantial question of law which

requires consideration. In this regard, the ratio laid down by the Supreme Court in the case of **Kondiba Dagadu Kadam v/s Savitribai sopan Gujar, reported 1999 SCC 2213,** must be referred to. It lays down that the conditions mentioned in Sec.100 of C.P.C. must be strictly fulfilled before a second appeal can be maintained and no Court has the power to add to or enlarge those grounds. The concurrent findings of facts howsoever erroneous cannot be disturbed by the High Court in exercise of the power under Sec.100. In other words, where from a given set of circumstances two inferences are possible, one drawn by the lower Court is binding on the High Court in second appeal. Adopting any other approach is not permissible. This is especially so in the present case when specific performance of the impugned contract was refused to the plaintiffs. It is needless to mention that specific performance of the contract is refused which is basically discretionary. Both the Courts below are found to have assessed the evidence properly and correctly and, therefore, it would brook no interference.

In the result, the appeal deserves to be dismissed and stands dismissed in limine with no order as to costs.

Consequently, civil application also stands dismissed with no order as to costs.

However, it is clarified that the ad-interim relief granted in the course of pendency of the appeal stands continued for six weeks from today.

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